Supreme Court, U.S.
FILED
MAY 31 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1777

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

JESSE POSEY, SR., ET AL.,
Petitioners,

v.

STATE OF OHIO,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

CITY OF COLUMBUS
DEPARTMENT OF LAW

RONALD J. O'BRIEN
CITY ATTORNEY
90 West Broad Street, Room 200
Columbus, Ohio 43215
614/645-7385
COUNSEL OF RECORD FOR RESPONDENT

MARIA JUSKIW ARMSTRONG
ASSISTANT CITY PROSECUTOR
375 South High Street, 7th Floor
Columbus Ohio 43215
614/645-7483
OF COUNSEL

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., P.O. Box 856 • Grove City, Ohio 43123

QUESTIONS PRESENTED

1. IS THE FOURTH AMENDMENT VIOLATED WHEN AN UNDERCOVER POLICE OFFICER ENTERS A SOCIAL CLUB AS THE GUEST OF A MEMBER AND OBSERVES CRIMINAL ACTIVITY WHICH FORMS THE BASIS FOR A GAMBLING CHARGE UNDER STATE LAW?

2. WHERE DIFFERENT SUBCLASSES OF CHARITABLE ORGANIZATIONS ARE DISTINGUISHED BY THE INTERNAL REVENUE CODE ON THE BASIS OF THE INUREMENT OF MONETARY BENEFITS, AND A STATE STATUTE CRIMINALIZES GAMBLING ACTIVITY BY THOSE GROUPS ON THE EXACT SAME BASIS, IS THE EQUAL PROTECTION CLAUSE VIOLATED?

LIST OF PARTIES

The Petitioner in this matter is the Fraternal Order of Eagles Post 3261, and two employees of the Eagles Post: Jesse Posey, Sr. and Sharon Parker.

The State of Ohio is the Respondent.

TABLE OF CONTENTS

	Page
Questions Presented	i
List of Parties	ii
Table of Authorities	iv
Constitutional and Statutory Provisions Involved	vi
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	3
Statement of Facts	4
Argument	6
Conclusion	17
Certificate of Service	18
Appendix	A-1

TABLE OF AUTHORITIES

Page

CASES:

Commonwealth v. Ginter, 423 A.2d 1024 (Pa., 1981) 10

Guidry v. State, 671 P.2d 1277 (Alaska, 1983). 10

Kadrmas v. Dikinson Pub. Schools, 487 U.S. (1988), 534 N.E.2d 61 & 65, 40 Ohio St. 3d at 425 11

Lewis v. United States, 385 U.S. 206 (1966). 7, 8

Maynard v. State, 508 N.E.2d 1346 (Ind., 1987) 10

Mills-Jennings, Inc. v. Dept. of Liquor Control (1982), 435 N.E.2d 407, 70 Ohio St. 2d 95. 12

People v. Catania, 366 N.W.2d 38 (Mich. App., 1985) 10

Ponce v. Green. 409 F.2d 621 (C.A. 9, 1969), cert. denied, 397 U.S. 1012 9

State v. Ahart, 324 N.W.2d 317 (Iowa, 1982). 10

State v. Anglada, 365 A.2d 720 (N.J., 1976). 10

State v. Buchwald, 196 N.W.2d 445 (Minn., 1972). 10

State v. Carey, 417 A.2d 979 (Maine, 1980) 10

State v. McCleary, 308 S.E.2d 883 (N.C., 1983), aff'd, 316 S.E.2d 87 (N.C., 1984). 15

State v. McCommas, 398 So. 2d 1100 (La., 1981). 10

State v. Nedergard, 753 P.2d 526 (Wash. App. 1988) 10

State v. Poland, 645 P.2d 784 (Ariz., 1982) 10

State v. Wyand, 501 A.2d 43 (Md., 1985) 15

United States v. Baldwin, 621 F.2d 251 (C.A. 6, 1980), cert. denied, 450 U.S.1043 8

United States v. Goldstein, 611 F. Supp. 624 (N.D. Ill. 1985) 9

United States v. Lyons, 706 F.2d 321 (C.A.D.C., 1983) 9

United States v. Miglietta, 507 F. Supp. 353 (MD Fla. 1980) 8

United States v. Novello, 519 F.2d 1078 (C.A. 5, 1975), cert. denied, 423 U.S. 1060 9

United States v. Osorio de Santiago, 626 F. Supp. (D.P.R. 1986), aff'd 828 F.2d 866 (C.A. 1, 1987) 9

United States v. Scherer, 673 F.2d 176, 182 (C.A. 7, 1982), cert. denied, 457 U.S. 1120 9

United States v. Schuster, 684 F.2d 744 (C.A. 11, 1982), cert. denied, 465 U.S. 1010 9

United States v. Shigemura, 682 F.2d 699 (C.A. 8, 1982), cert. denied, 459 U.S. 1111 9

United States v. Wright (C.A. 8, 1981), 641 F.2d 602, 605 9

CONSTITUTIONAL PROVISIONS

Page

Ohio Const. sec. 6, art. XV 12

FEDERAL STATUTES

18 U.S.C. 1511 14

18 U.S.C. 1955(e) 14

I.R.C. Sec. 501(c)(3) 4, 13, 14, 16

I.R.C. Sec. 501(c)(8) 4, 14

Pub. L. 91-452, Title VIII, Sec. 803(a)
10-15-70 Stat. 937 15

OHIO STATUTES

O.R.C. 2915.01 ..... 13, 14

O.R.C. 2915.02 ..... 4, 13, 14, 15, 16

OTHER AUTHORITIES

3 W. LaFave, Search and Seizure Sec.
8.2(m) (2d ed. 1987) 6

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

JESSE POSEY, et al., Petitioners,

v.

STATE OF OHIO, Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinions of the courts below are adequately set forth in the petition.

JURISDICTION

Respondent agrees with the initial statements concerning this Court's jurisdiction over this matter. However, as Petitioner points out in the last paragraph of the Jurisdictional section, the petition is filed well beyond the sixty day period set forth in United States Supreme Court Rule 20.1.

The instant case was argued and submitted to the Ohio Supreme Court on September 21, 1988, and decided on December 30, 1988. Because of the retirement of one Justice, the decision was not released and journalized until January 30, 1989, when the sixty-day period began to run. The petition for writ of certiorari should have been filed on or before March 31, 1989.

Petitioner argues that the amendments to 28 U.S.C. 1257 were discovered beyond the sixty day period. Respondent notes that the amended 28 U.S.C. 1257 became law on June 27, 1988 with an effective date of September 25, 1988, over four months before the journalization of the instant matter by the Ohio Supreme Court. The ninety-day delay before the effective date, as well as the four subsequent months, was ample time for Petitioner to have discovered the amendments.

The March 31, 1989 deadline having long since expired, and no extension having been granted by this Court, it would appear that Petitioner's application for writ of certiorari is submitted out of rule. Respondent respectfully urges this Court to deny the petition, if for no other reason than for its untimely filing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents rely upon the following constitutional and statutory provisions:

United States Constitution, Fourth Amendment, Fourteenth Amendment

Ohio Constitution, Section 6, Article XV

18 U.S.C. 1511

18 U.S.C. 1955

I.R.C. Sec. 501(a)

I.R.C. Sec. 501(c)(3)

I.R.C. Sec. 501(c)(8)

I.R.C. Sec. 501(d)(2)(3)

P.L. 91-452, Title VIII, Sec. 803(a) 10-15-70 Stat. 937

Ohio Revised Code Sec. 2915.01 et seq.

STATEMENT OF FACTS

On May 7, 1986, Detective Ernest Cook, an undercover Deputy of the Franklin County, Ohio Sheriff's Office, approached Appellants' establishment, the Fraternal Order of Eagles Post 3261, accompanied by an authorized member of the Eagles Lodge. The Eagles Lodge is a non-profit fraternal organization granted tax-exempt status under Section 501(c)(8) of the Internal Revenue Code. The Internal Revenue Code defines Sec. 501(c)(8) clubs as fraternal organizations which operate for the exclusive benefit of the individual members.

The Eagles member, who had previously informed the undercover detective that she believed illegal gambling regularly occurred at the Club, knocked on the door to the Eagles Lodge. The door was immediately opened and the member and her guest were advised that they may enter the premises. Although the member exhibited her membership identification, the record indicates that the doorkeeper did not look at her identification. Neither the informant nor her guest were questioned in any manner. The doorkeeper simply opened the door and invited the two to enter.

Upon entering the Club, Detective Cook plainly observed evidence of gambling activity. A search warrant was obtained based on the Detective's observations and three citations for violations of Ohio Revised Code Sec. 2915.02 were subsequently issued to Petitioners.

The above-mentioned Ohio Revised Code Section criminalizes the type of gambling witnessed by Detective Cook when conducted by any individual or group other than a charitable organization defined by I.R.C. 501(c)(3). The I.R.C. defines a 501(c)(3) organization as one in which no part of the net earnings inures to the benefit of any individual. The Ohio Revised Code Chapter which criminalizes gambling defines the illegal activity as that

which is designed to produce income for the individual.

Petitioner accurately summarizes the various court proceedings giving rise to the instant matter.

ARGUMENT

I.
A FOURTH AMENDMENT VIOLATION DOES NOT OCCUR WHEN AN UNDERCOVER POLICE OFFICER ENTERS A SOCIAL CLUB AS THE GUEST OF A MEMBER AND OBSERVES CRIMINAL ACTIVITY WHICH FORMS THE BASIS FOR A GAMBLING CHARGE UNDER STATE LAW.

A. The Ohio Supreme Court correctly concluded that an undercover officer's failure to identify himself does not undermine consent to entry.

The court below correctly determined that "consent does not lose its status of being freely and voluntarily given merely because it would not have been given but for the fact that the other person failed to identify himself as a police officer or agent." 534 N.E.2d 61, 40 Ohio St. 3d 420, syllabus. The Ohio court based its decision on a series of cases issued by this Court. See pages A-13 through A-15 of the Petition. The same series of cases is examined and this Court's position summarized in 3 W. LaFave, *Search and Seizure* Sec. 8.2(m) (2d ed. 1987). At page 223 of the LaFave treatise, a conclusion identical to the lower court's holding is reached:

> when an individual gives consent to another to intrude into an area or activity otherwise protected by the Fourth Amendment, aware that he will thereby reveal to this other person either criminal conduct or evidence of such conduct, the consent is not vitiated merely because it would not have been given but for the nondisclosure or affirmative misrepresentation which made the consenting party unaware of the

> other person's identity as a police officer or police agent.

Of the cases relied upon by the court below, *Lewis v. United States*, 385 U.S. 206 (1966), is the most critical to the analysis of this fact pattern. The court below correctly recognized that the *Lewis* case is directly on point and dispositive. Petitioner argues that the facts presented in the instant matter differ significantly from the *Lewis* case. In *Lewis*, the defendant invited an undercover federal narcotics agent into his home, believing the agent was only an interested drug purchaser. This Court determined that

> a government agent, in the same manner as a private person, may accept an invitation to do business and may enter upon the premises for the very purposes contemplated by the occupant.

In the case at bar, Petitioner invited the undercover detective into the Lodge, believing he was a social guest intending to enjoy the activities available. Once in the Club, the officer acted precisely as contemplated by the Lodge. The Ohio Supreme Court, following this Court's reasoning in *Lewis*, held that no violation of the Fourth Amendment occurred.

As the court below realized, the facts presented in *Lewis* are identical to the facts of this case in every relevant aspect. This Court's determination in *Lewis* was properly applied by the Ohio Supreme Court. Moreover, as stated below, the lower court's decision is also supported by numerous decisions of other state and federal courts. The court below correctly decided this issue, and its determination need not be reviewed by this Court. Respondent respectfully urges this Court to deny the Petition.

B. The Opinion of the Ohio Supreme court is not in conflict with the decision of any state or federal court and no substantial federal constitutional question is presented.

Petitioner asserts that "there is a divergence of opinion in both federal and state courts where government officials gain entry onto private property by deception as to the agents' identity or purpose." Petition p. 7. In framing the analysis as stated above, Petitioner fails to make a distinction which the courts, both state and federal, consistently make in ruling on the validity of a warrantless consent search. There is a distinct difference between a consensual entry acquired by a deception as to one's identity and an entry obtained by deception as to one's purpose.

The cases presented by Petitioner in support of his argument are cases involving deception of both purpose and identity. The instant matter presents no issue of deception as to purpose. The undercover deputy in this case was invited into the Club to participate in all of its activities, including gambling. Once inside, his activity conformed precisely with that expected and allowed by Petitioner.

When presented with fact patterns which parallel those presented here, numerous courts have found no Fourth Amendment violation. Respondent is unable to find a single case decided since this Court's pronouncement of *Lewis* supra, in which any court found that deception as to identity alone invalidated the consent given. Federal and state courts unanimously and correctly apply *Lewis*, supra, to find no constitutional violation.

In addition to *United States v. Baldwin*, 621 F.2d 251 (C.A. 6, 1980), cert. denied, 450 U.S. 1043, and *United States v. Miglietta*, 507 F. Supp. 353 (MD Fla. 1980), which are cases cited by Petitioner, and *United States v.*

Goldstein, 611 F. Supp. 624 (N.D. I11. 1985), and *United States v. Osorio de Santiago*, 626 F. Supp. 329 (D.P.R. 1986), aff'd 828 F.2d 866 (C.A. 1, 1987), cases highlighted by the court below, the Fifth, Seventh, Eighth, Ninth, Eleventh, and District of Columbia circuits[1] have ruled on the issue presented in this case. In *United States v. Scherer*, 673 F.2d 176, 182 (C.A. 7, 1982), cert. denied, 457 U.S. 1120, the Court concluded:

> A government agent may obtain an invitation onto property by misrepresenting his identity, and if invited, does not need probable cause nor warrant to enter so long as he does not exceed the scope of his invitation..

In *United States v. Wright* (C.A. 8, 1981), 641 F.2d 602, 605, the Eighth Circuit upheld the search by undercover officers and held that consent was knowingly and intelligently given even though the defendant was unaware of the officers' identity. The court noted:

> The undercover officers did not engage in any conduct inconsistent with that expected or contemplated by appellant when he opened the door.

The various state courts which have decided cases involving an undercover officer's misrepresentation of identity are also unanimous in their conclusion that an undercover officer's misrepresentation of identity alone is

[1] *United States v. Novello*, 519 F.2d 1078 (C.A. 5, 1975), cert. denied, 423 U.S. 1060; *Ponce v. Green*, 409 F.2d 621 (C.A. 9, 1969), cert. denied, 397 U.S. 1012; *United States v. Schuster*, 684 F.2d 744 (C.A. 11, 1982), cert. denied, 465 U.S. 1010; *United States v. Shigemura*, 682 F.2d 699 (C.A. 8, 1982), cert. denied, 459 U.S. 1111; and *United States v. Lyons*, 706 F.2d 321 (C.A.D.C., 1983).

constitutional. The State of Washington provides a long series of cases upholding "ruse entries" by police officers. In the most recent case, a police officer gained entry by posing as an interested home buyer who, when looking through the home as an interested buyer would, observed evidence of criminal activity. *State v. Nedergard*, 753 P.2d 526 (Wash. App. 1988). The court upheld the entry as consensual and found no Fourth Amendment violation.[2]

In *Commonwealth v. Ginter*, 423 A.2d 1024 (Pa., 1981), the Pennsylvania court was faced with a fact pattern virtually identical to the case at bar. In Ginter, an undercover liquor agent, posing as the guest of a member-informant, entered a private social club and observed the illegal sale of liquor. The Pennsylvania court upheld the search, and found it consensual based upon the *Lewis* case.[3]

When dealing with ruse entries, some states have articulated an additional requirement that the officer show some justification to support the entry. Three states which require the officer to articulate some reasonable belief that criminal activity is occurring are Iowa, *State v. Ahart*, 324 N.W.2d 317 (1982); Michigan, *People v. Catania*, 366 N.W.2d 380 (1985); and Minnesota, *State v. Buchwald*, 196 N.W.2d 445 (1972).

Although the court below did not articulate such a requirement, it did note that the undercover detective had

---

[2]Other states which have upheld the entrance of a police officer posing as a home buyer include Alaska, *Guidry v. State*, 671 P.2d 1277 (1983); Arizona, *State v. Poland*, 645 P.2d 784 (1982); and New Jersey, *State v. Anglada*, 365 A.2d 720 (1976).

[3]Other states upholding consensual entry where the officer uses deception as to identity, which does not exceed the scope of the consent, include Indiana, *Maynard v. State*, 508 N.E.2d 1346 (1987); Louisiana, *State v. McCommas*, 398 So. 2d 1100 (1981); and Maine, *State v. Carey*, 417 A.2d 979 (1980).

information from the member that some type of gambling activity was occurring at the Eagles Lodge. Under the analysis applied by the courts of Iowa, Michigan, and Minnesota, such information, although perhaps not specific enough to support the issuance of a search warrant, would provide justification for the deceptive entry.

All of the cases cited above parallel the reasoning of the court below. There is no conflict among the various courts as to this issue and no need for this Court to grant certiorari to secure harmony of decisions.

II

AN EQUAL PROTECTION VIOLATION DOES NOT OCCUR WHEN A STATE LEGISLATURE CHOOSES TO CRIMINALIZE GAMBLING ACTIVITY BY CERTAIN SUBCLASSES OF CHARITABLE ORGANIZATIONS AND BASES THE PROHIBITIONS ON RATIONAL DISTINCTIONS FOUND IN THE INTERNAL REVENUE CODE.

The Ohio Supreme Court set forth the following test for equal protection analysis based upon this Court's opinion in *Kadrmas v. Dikinson Pub. Schools*, 487 U.S.___ (1988):

> With regard to the application of R.C. 2915.02 to appellant FOE, no suspect classification is made and no fundamental right is curtailed. Accordingly, as with most social and economic legislation, we will uphold the classifications drawn by the statute if they are rationally related to a legitimate state interest.
>
> 534 N.E.2d 61 & 65, 40 Ohio St. 3d at 425.

In the instant matter, as the court below found, the relationship between the state interest of prohibiting individual monetary gain through gambling is rationally related to the criminalization of gambling by groups whose income directly inures to the benefit of individual mem-

bers. More specifically, the exemption of organizations legally defined as providing no monetary benefit to individual members is not contrary to the governmental objective.

In the State of Ohio, the governmental interest in regulating gambling activity is very strong and well established. At the outset, it should be noted that the Ohio Constitution specifically prohibits gambling activity except as permitted by the Legislature. Section 6, Article XV, provides that "lotteries, and the sale of lottery tickets, for any purpose whatever shall forever be prohibited in this State."

In *Mills-Jennings, Inc. v. Dept. of Liquor Control* (1982), 435 N.E.2d 407, 70 Ohio St. 2d 95, the Ohio Supreme Court interpreted the above-reference section, and emphasized Ohio's strong public policy against gambling. More importantly, the lower court noted that the gambling statutes "when being interpreted and enforced, should not go beyond *the specific provisions* of the [Ohio] Criminal Code as revised in 1974 and as subsequently amended." *Mills-Jennings, supra* at 101 (emphasis added).

The well-established public policy and pronouncements of the Ohio Supreme Court indicate that, while the legislature may have relaxed the prohibitions against gambling over the years, the legislative intention must be strictly followed.

The state interest in prohibiting gambling is defined by the Ohio Legislature in the published committee comments to the House Bill amending Ohio's gambling laws. (Appendix A-1.) That comment provides, in pertinent part:

> The fundamental thrust of new Chapter 2915 is to prohibit the business of gambling without forbidding gambling carried on for pleasure rather than profit.

> Under the chapter, all forms of gambling and activities in aid of it are illegal if carried on as a business, or for personal profit, or as a significant source of income or livelihood.

O.R.C. 2915.01(E), set forth by Petitioner at page A-35, also evidences the legislative purpose. That section defines a game of chance conducted for profit as one designed to produce income for the individual person. By prohibiting games of chance as defined above, the state objective of curbing individual gain through gambling is met.

O.R.C. 2915.02(D) sets forth narrowly defined exemptions form prosecution for gambling. In subsection (2)(b) of the above referenced statute, the legislature has determined that a charitable organization may gamble only if it is:

> exempt from federal income taxation under subsection 501(a) *and described in subsection 501(c)(3) of the Internal Revenue Code;*
>
> R.C. 2915.02(D)(2)(b), emphasis added.

R.C. 2915.02(D) clearly manifests the Ohio Legislature's intention to prohibit 501(c)(8) organizations, such as Petitioner's, from gambling. This intention is further evidenced by the Ohio General Assembly's repeated refusal to amend R.C. 2915.02(D). during the 1987-1988 session, the state legislature failed to pass four separate bills proposing amendments to this subsection.

Petitioner's argument that the narrowly tailored exemption for 501(c)(3) organizations contradicts the stated governmental interest, is meritless. The Internal Revenue Code definitions of charitable organizations, upon which the Ohio gambling statute is founded, reveal that the objective of prohibiting personal benefit is direct-

ly paralleled in the tax code.

The inurement of benefits is the crucial distinction between 501(c)(3) organizations and other 501(c) organizations. 501(c)(8) defines a fraternal order as an organization which operates "for the exclusive benefit of the members of a fraternity itself." 501(c)(3) includes the following:

> *no* part of the net earnings of which inures to the benefit of any private shareholder or individual.

The purpose of Ohio's gambling statute reflects this distinction. R.C. 2915.02 prohibits the use of games of chance when benefit inures to any individual. By carving a narrow exception allowing 501(c)(3) organizations to gamble, the legislature did not destroy this purpose or undermine the strong public policy reasons for curtailing gambling activity.

A review of federal gambling laws also supports Respondent's argument. The federal gambling law, like our state law, limits the exemption to 501(c)(3) organizations. Like R.C. 2915.01(E), 18 U.S.C. 1955(e) defines illegal gambling as activity which benefits, or produces income for, the individual.

18 U.S.C. Section 1955(e) provides the following exemption for charitable organizations:[4]

> (e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the

[4]18 U.S.C. 1511, which makes it illegal for a government official to conspire to obstruct state or local gambling laws, contains the identical exemption.

> benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

The legislative history to Pub. L. 91-452, Title VIII, Sec. 803(a), 10-15-70, Stat. which amended 18 U.S.C. Section 1955, explained:

> Section 1955(e) excluded from the operation of the section games of chance conducted by tax exempt organizations where no part of the gross receipts inures to the benefit of an individual.

Finally, case law supports the lower court's conclusion that the exemption of 501(c)(3) organizations from R.C. 2915.02 proscriptions does not violate the equal protection clause. To the best of Respondent's knowledge, only two courts have dealt specifically with this topic.

Besides the Ohio court in the case at issue, courts for the states of North Carolina and Maryland have found a rational nexus and rejected the equal protection claim. See *State v. McCleary*, 308 S.E.2d 883 (N.C., 1983) aff'd 316 S.E.2d 87 (1984), and *State v. Wyand*, 501 A.2d 43 (Md., 1985).

Petitioner argues that the Ohio laws regulating bingo, and the laws of other states undermine the rationality of the nexus between Ohio's gambling law exemptions and the governmental interest. In reply, Respondent would merely point out that other Ohio laws and the laws of other states cannot impact upon an equal protection analysis of R.C. 2915.02.

These laws are founded upon completely different state interests, the creation of which lies strictly within the province of the various state legislatures.

The Ohio Supreme Court correctly concluded that R.C.

2915.02 does not deny equal protection of the law by exempting 501(c)(3) organizations from prosecution. The legislature's decision to permit gambling only by those organizations in which no monetary benefit inures to the individual members, is rationally related to the state's interest in preventing individuals from earning income from gambling. Respondent respectfully urges this Court to deny Petitioner's application for writ of certiorari.

CONCLUSION

For the reasons set forth above, Respondents respectfully urge this Court to deny the petition for writ of certiorari.

Respectfully submitted,

CITY OF COLUMBUS
DEPARTMENT OF LAW

RONALD J. O'BRIEN
CITY ATTORNEY
90 West Broad Street, Room 200
Columbus, Ohio 43215
614/645-7385
COUNSEL OF RECORD FOR
RESPONDENT

MARIA JUSKIW ARMSTRONG
ASSISTANT CITY PROSECUTOR
375 S. High Street, 7th Floor
Columbus, Ohio 43215
614/645-7483
OF COUNSEL

CERTIFICATE OF SERVICE

I, Ronald J. O'Brien, being a member of the Bar of this Court, hereby certify that three copies of this Brief in Opposition were mailed, first class postage prepaid, on May 31, 1989, to John A. Connor II, 218 East State Street, Columbus, Ohio 43215. I further certify that all parties required to be served have been served.

RONALD J. O'BRIEN
90 West Broad Street, Room 200
Columbus, Ohio 43215
COUNSEL OF RECORD FOR
RESPONDENT

APPENDIX

Committee Comment to H 511

The fundamental thrust of new Chapter 2915. is to prohibit the business of gambling without forbidding gambling carried on for pleasure rather than profit.

Under the chapter, all forms of gambling and activities in aid of it are illegal if carried on as a business, or for personal profit, or as a significant source of income or livelihood. Otherwise, no form of gambling is illegal. Gambling in public is prohibited to avoid enforcement problems, and this represents a partial exception to the general rule in the chapter.

Cheating as such was not an offense under former law, but is an offense under Chapter 2915. regardless of whether the gambling activity in which it occurs is legal or illegal. For penalty purposes, cheaters are treated much the same as thieves under new section 2913.02 of the Revised Code. A simplified version of a former prohibition against "fixing" sporting events is also included in the chapter.